

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S  
APPENDIX**



74-2153

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**United States Court of Appeals**

FOR THE SECOND CIRCUIT

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KAMA RIPPA MUSIC, INC.,

*Plaintiff-Counterdefendant/  
Appellant,*

*v.*

MS. MELANIE SCHEKERYK,

*Defendant-Counterclaimant/  
Appellee.*

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KAMA RIPPA MUSIC, INC.,

*Plaintiff-Counterdefendant,*

*v.*

MS. MELANIE SCHEKERYK, MR. PETER SCHEK-  
ERYK, individually and d/b/a AMELANIE MUSIC,

*Defendants-Counterclaimants.*

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On Appeal From An Order Of The United States District  
Court For The Southern District Of New York  
(73 Civ. 3789)

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**APPELLEE'S SUPPLEMENTAL APPENDIX**

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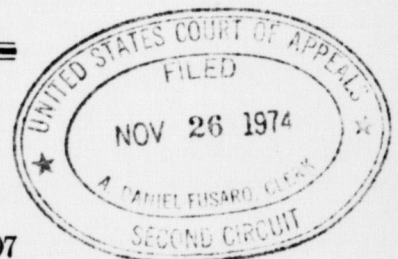
SANDOR FRANKEL

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New York, New York 10007

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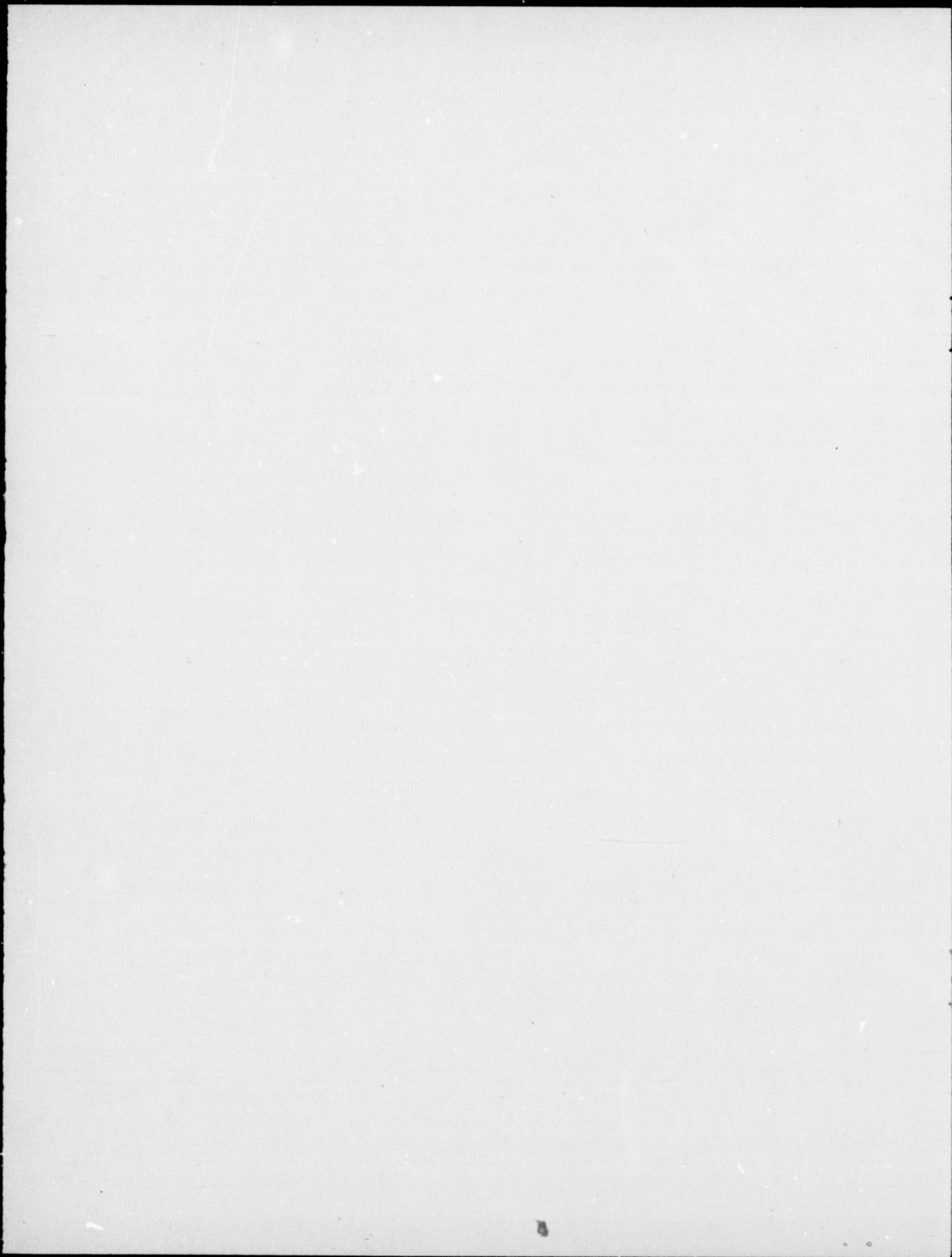
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APPELLEE'S SUPPLEMENTAL APPENDIX

Co-Publishing Agreement

Agreement made as of the 31st day of May, 1968 by and between AMELANIE MUSIC and TWO PEOPLE MUSIC, c/o Howard Beldock, Beldock & Kushnik, 720 Fifth Avenue, New York, New York hereinafter designated as "Participant" and KAMA SUTRA MUSIC, INC. and KAMA RIPPA MUSIC, INC., of 1650 Broadway, New York, New York, hereinafter designated as "Publisher".

In consideration of the sum of One (\$1.00) Dollar, and other good and valuable considerations, receipt of which is hereby acknowledged, and the mutual covenants herein contained, it is agreed between the parties hereto as follows:

1. (A) During the term hereof, Publisher and Participant shall co-publish each of the copyrights and/or musical compositions, hereinafter called musical compositions, which Participant acquires \* and publishes from and after the date hereof upon the terms and conditions hereinafter set forth. The territory covered by this Agreement shall be for the world, subject only to the limitations thereon and the rights of the authors and/or composers of the musical compositions, it is agreed that the copyrights in and to each of the musical compositions shall be registered jointly in the name of Publisher and Participant, and Publisher and Participant shall each have an undivided one-half ( $\frac{1}{2}$ ) share in and to the right, title and interest of each of the compositions, including the profits

RIDER TO PARAGRAPH 1(A)

However, notwithstanding anything to the contrary contained herein, if in the event Participant does not own or control a composition totally, then, Publisher shall only be entitled to one-half (50%) of whatever interest Participant has, as well as earnings apportioned thereto, and if Participant does not control the administration of these compositions, then Publisher shall not control administration of these compositions. Participant agrees to use Participant's best efforts to secure administrative rights to all compositions Participant obtains an interest in.

neither the composition nor any part thereof, nor the exercise by any authorized party of the rights granted to Company hereunder, will violate or infringe upon the title or interest of any third party.

\* an interest in whole or part,

(iii) Participant has full right, power and authority to enter into and perform this Agreement and Participant has not granted during the term hereof and Participant will not grant or attempt to grant to any other person, firm or corporation, rights of any kind inconsistent with the rights Participant grants to Publisher herein, which grant would derogate from the rights granted to Company hereunder. Participant will take no action inconsistent with or which would derogate from the rights granted to Publisher hereunder.

2. Publisher shall have sole and exclusive rights, except as hereinafter provided for, to manage, control and protect compositions, including, but not limited to, the right to print, publish, sell, translate, arrange and adapt, use and license the use of the musical compositions in the aforementioned territory, and to execute in Publisher's own name any and all licenses and agreements whatsoever affecting or respecting the musical compositions, including, but not limited to, licenses for mechanical reproduction, public performance and synchronization uses.

3. Participant further represents and warrants, and it is the essence of this Agreement, that at all times during the term of this Agreement, Participant will actively engage and participate in the acquisition of musical compositions and the music publishing business in the aforementioned territory, and that Participant is entitled to and has the sole exclusive right, to the services of Melanie Safka, as a songwriter, for a term concurrent with the term of this Agreement, and that a copy of the Exclusive Songwriters Agreement between Participant, Publisher and Melanie Safka shall be subject to Company's approval and attached hereto as Exhibit "A", and that with respect to any other writers whose musical compositions are acquired by Participant, that such compositions shall be acquired pursuant to Publisher's Standard Songwriters Contract attached hereto as Exhibit "B". Participant agrees that it shall promptly deliver to Publisher material necessary to enable Publisher to register the copyrights and do all things that a Publisher customarily does, including its obligations hereunder, to the extent same pertains hereto.

4. Publisher shall be entitled to and shall receive and collect any and all revenue, income and sums derived from the musical compositions including Participant's share of performance fees collectable by ASCAP and BMI subject only to provisions hereinafter made.



5. Publisher agrees to and shall pay to the Participant, after recoupment of all advances made by Publisher to Participant hereunder, fifty (50%) percent of the net income actually received and derived from the musical composition from the aforementioned territory, except as herein otherwise specifically provided. Net income for the purposes of this Agreement shall be gross receipts less:

(A) Royalties and other sums payable to the authors and/or composers of the musical compositions, and/or other parties, if any, which are to be paid by Publisher directly to such authors and/or composers.

(B) Specific mutually agreed upon exploitation expenses.

(C) Costs of printing, engraving, arranging and editing printed editions of the musical compositions.

(D) The costs of making demonstration records, however said costs shall not exceed One Hundred Twenty Five (\$125) Dollars per musical composition for which a demonstration record is made.

(E) Ten (10%) percent of the gross receipts derived from the musical compositions to cover Publisher's administrative charge for such items as bookkeeping, handling and other general administrative costs, including the cost of lead sheets and copyright registration fees.

foreign

(F) The costs of the collection or other fees actually charged by a collection agent who renders services with respect to the musical compositions subject hereto (provided that such collection fees shall not be in excess of those customarily imposed on music publishers throughout the industry) and any charges of any sales agents employed to sell any printed editions made of a composition subject hereto.



6. Performance rights in the musical composition, to the extent permitted by law, shall be assigned to and licensed by ASCAP and BMI. ASCAP and BMI will be and hereby is authorized to collect and receive all such monies earned from such public performances of the musical composition and to pay directly to Publisher One Hundred (100%) percent of the shares customarily allocated by ASCAP and BMI to each of the parties as each of the parties shall then be entitled to receive from ASCAP and BMI in accordance with each of the parties then existing agreement with ASCAP and BMI, until such time as Publisher has recouped from Participant all of the monies Publisher has advanced to Participant. At such time as Publisher does recoup the monies advanced to Participant, Publisher agrees to instruct ASCAP and BMI to pay directly to Participant Fifty (50%) percent of the shares customarily allocated by ASCAP and BMI to Participant with respect to the compositions subject hereto. Participant agrees that it will not request ASCAP and BMI to make advances to Participant with respect to the compositions subject hereto, until recoupment has been effected.

7. All sums payable to Participant pursuant hereto by the Publisher, shall be accounted for, in writing, paid at the time of accounting, within forty-five (45) days after the end of each calendar quarter. It is understood and agreed that Participant shall have the right during reasonable business hours, to inspect the books and accounts of Publisher upon ten (10) business days prior written notice.

8. Participant gives Publisher equal benefits of any warranties or representations which it obtains under agreements affecting the compositions.

9. (A) Publisher shall have the sole right to prosecute and/or defend all suits and actions respecting the musical compositions, and generally to do and perform all things necessary concerning the same and the copyrights therein to prevent and restrain the infringement of copyrights or other rights in the same. Anything hereinabove contained to the contrary notwithstanding, Participant shall have the right, at its sole expense, to join in the prosecution or defense of any action, but Publisher shall control all actions. No settlement may be made by either Publisher or Participant unless the other party agrees and each party agrees that their consent thereto shall not be unreasonably withheld. In the event of a recovery of any money as a result of a judgment or a settlement received by the Publisher, such monies shall be divided between the Publisher and the Participant on the same basis as provided for in division of net income in Paragraph 5 hereof, after first deducting the expenses of obtaining the same, including the costs of publisher's attorney's fees. Any judgments or settlements against the Publisher respecting the musical compositions

shall be borne by the Publisher and Participant in the proportions set forth in Paragraph 5, respecting the division of net income, unless such judgment or settlement is the result of an inconsistency with any one of the representations and warranties made herein in which event Participant agrees to reimburse Publisher in full for any and all losses it may have suffered as a result of a breach of said representation or warranty.

(B) Participant will indemnify and hold Publisher harmless of any and all loss, damage and expense (including reasonable attorney's fees) arising out of or in connection with any claim reduced to judgment or demand reduced to judgment by a third party which is inconsistent with any one or more of the warranties, representations, covenants or agreements made by Participant herein and Participant agrees to reimburse Publisher on demand for any one or more payments made by Publisher with respect to any liabilities suffered by Publisher to which the foregoing indemnity applies.

10. The term of this Agreement shall commence at the date hereof and shall continue for a period of one year thereafter, but of course, this Agreement shall be for the full term of the copyright throughout the world in and to the compositions, including renewals and extensions thereof, to the extent owned or controlled by Participant and Publisher, except that with respect to all compositions written by Melanie Safka the term of this Agreement shall be for the initial copyright term only as that term is presently or may hereinafter be defined. Participant hereby grants to Publisher two separate options, each to renew this Agreement for successive periods of one year each upon all the same terms and conditions as herein set forth, providing Publisher provides Participant written notice of Publisher's election to exercise said option fifteen (15) days prior to the expiration date of said term, as same may be renewed or extended.

11. Until the expiration of the terms of the within Agreement, neither party may sell nor assign to a third party, its interest in the rights and copyrights in and to the compositions subject hereto, except to a parent company or to an affiliate under common ownership, or in connection with the merger or sale of either party's assets provided that the assignee assumes all obligations hereunder and that the assignor remains primarily liable for the performance of its obligations hereunder. At the termination of the term of the within agreement, however, if either party desires to sell or assign or license its interest in the rights and copyrights in and to the compositions, then either party will first make its offer in writing by registered or certified mail to the other party on the basis of specific terms. If the party to whom the offer is



made fails to accept the offer in writing by similar mail to the offeror within fifteen (15) business days after receipt of the offer, the offeror shall be free to enter into said agreement on the same terms and conditions as presented to the offeree and the offeror agrees to deliver to the offeree a copy of the agreement the offeror has entered into with any third party promptly after the entering into of such agreement.

12. Publisher agrees to furnish Participant the following in connection with Participant's activity in the publishing field: a private furnished office, the use of a secretary and the reasonable use of a telephone for business purposes, throughout the course of this agreement.

13. Publisher agrees to advance to Participant the following sums of money:

(A) Four Thousand (\$4,000) Dollars upon the execution hereof, receipt of which is hereby acknowledged.

(B) The sum of One Hundred Fifty (\$150) Dollars per week during each week of the term of this Agreement. However, if in the event at the end of the first year of the term hereof or any time subsequent thereto Publisher has not recouped Four Thousand (\$4,000) Dollars advanced pursuant to Paragraph 13(A) above Publisher may at its election discontinue the weekly advance payments of One Hundred Fifty (\$150) Dollars per week until such time as the earnings of Publisher hereunder equal the sum of the monies advanced to Participant at the date of discontinuance. At such time as Publisher has recouped for itself the total amount advanced up to the date of discontinuance, Publisher agrees to again pay Participant the sum of One Hundred Fifty (\$150) Dollars per week, and if in the event after such discontinuance and recoupment Publisher has outstanding advances totalling Four Thousand (\$4,000) Dollars or more, the procedure as provided above may again be repeated at Publisher's election.

14. Participant agrees that both sides of the first three singles by the Artist known as Melanie (herein referred to as Melanie Safka) on CBS Records or Buddah Records will contain compositions, the copyrights of which, throughout the world, will be owned on the following basis, a one-half ( $\frac{1}{2}$ ) undivided interest (50%) in the name of H & L Music or its assignees, an undivided one-quarter ( $\frac{1}{4}$ ) interest (25%) in the name of Kama ~~Safka~~ Music, Inc. or its assignees and an undivided one-quarter ( $\frac{1}{4}$ ) interest (25%) in the name of Amelanie Music or its assignees, as provided in a certain agreement attached hereto as Exhibit "C" hereof, between Participant and H & L Music, dated March 30, 1968 and executed by Participant. Participant agrees that neither Participant nor Peter Schekeryk individually will release any of Participant's current writers or any other hereinafter

acquired writers during the term of this Agreement from their agreements with Participant, nor shall such agreement be terminated, amended or varied from the standard form attached hereto as Exhibit "B", unless Publisher approves such release, termination or amendment in writing prior to the making of such agreement by Participant and any songwriter.

15. This Agreement sets forth the entire understanding between the parties with respect to the subject matter thereof, and no modification, amendment, waiver, termination or discharge of this agreement or any of the provisions thereof shall be binding upon either party unless confirmed by a written instrument signed by the parties sought to be charged. No waiver of any provisions or default under this Agreement shall affect either party's rights thereafter to enforce such provision or to exercise any right or remedy in the event of any other default whether or not similar. This Agreement and all of its provisions shall be interpreted and construed everywhere in accordance with the Laws of the State of New York, applicable to contracts executed and to be performed therein.

If the foregoing accurately sets forth your understanding of our Agreement, kindly cause this letter to be counter-signed where indicated below.

Very truly yours,

Kama Ripa Music, Inc.

By *William Kiss*

Kama Sutra Music, Inc.

By *William Kiss*

Accepted & Agreed To:

AMELANIE MUSIC

By *Steve White*

TWO PEOPLE MUSIC

By *Steve White*